

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEVIN THOMAS, :
Petitioner, :
: :
v. : : CIVIL ACTION NO. 21-CV-4216
: :
BARRY SMITH, *et al.*, :
Respondents. :
:

ORDER

AND NOW, this 19th day of September, 2023, upon consideration of the Petition for Writ of Habeas Corpus, ECF No. 1; the Commonwealth's Response, ECF No. 7; the Commonwealth's Supplemental Response, ECF No. 11; the other documents filed by the parties; the Report and Recommendation issued by Magistrate Judge Carol Sandra Moore Wells, ECF No. 12; and in the absence of objections;¹ **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation, ECF No. 12, is **APPROVED** and **ADOPTED**.

¹ When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report, under *de novo* or any other standard. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Nevertheless, the United States Court of Appeals for the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). "When no objections are filed, the district court need only review the record for plain error or manifest injustice." *Harper v. Sullivan*, No. 89-4272, 1991 U.S. Dist. LEXIS 2168, at *2 n.3 (E.D. Pa. Feb. 22, 1991). *See also Hill v. Barnacle*, No. 15-3815, 2016 U.S. App. LEXIS 12370, at *16-17 (3d Cir. 2016) (holding that even when objections are filed, district courts "are not required to make any separate findings or conclusions when reviewing a Magistrate Judge's recommendation *de novo* under 28 U.S.C. § 636(b)"); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge's report and recommendation for clear error). The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

2. The Petition for Writ of Habeas Corpus, ECF No. 1, is **DISMISSED**, without an evidentiary hearing.

3. Petitioner has neither shown denial of a federal constitutional right, nor established that reasonable jurists would disagree with this court's procedural disposition of his claims. Consequently, a certificate of appealability is **DENIED**.

4. The Clerk of Court shall **CLOSE** this case.

BY THE COURT:

/s/ John M. Gallagher _____
JOHN M. GALLAGHER, J.